

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Long Beach, CA 90802-4302
(562) 590-5071

Filed: 11/8/07
49th Day: 12/27/07
180th Day: 5/6/08
Staff: Meg Vaughn-LB
Staff Report: December 20, 2007
Hearing Date: January 9-11, 2008
Commission Action:



Th 4c

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-07-398

APPLICANT: Amen Wardy

AGENT: Eric Mossman

PROJECT LOCATION: 3715 Seashore Drive, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Demolition of an existing single family residence and construction of a new 2,266 square foot, 29 feet high (at maximum point), two story single family residence with an attached two car garage.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-In-Concept (No. 2089-2007) dated October 18, 2007.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan and *Coastal Hazard and Wave Runup Study for 3715 Seashore Drive, Newport Beach, CA prepared by Geosoils, Inc. dated October 2007.*

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing construction of a new beach-fronting single-family residence. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events.

Staff is recommending **APPROVAL** of the proposed project with seven (7) special conditions regarding: 1) assumption of risk; 2) no future shoreline protective device; 3) conformance with the submitted drainage and run-off control plan; 4) storage of construction materials, mechanized equipment and removal of construction debris; 5) future development; 6) use of drought tolerant, non-invasive plants for landscaping; and 7) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report. Proposed landscaping is comprised of native, drought tolerant, non-invasive plant species.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Project Plans
-

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. **SPECIAL CONDITIONS**

1. **Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

2. **No Future Shoreline Protective Device**

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-07-398 including, but not limited to, the residence, garage, foundations, and patio, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowners shall remove the development authorized by this permit, including the residence, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowners shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. **Drainage and Run-Off Control Plan**

The applicant shall conform to the Site and Grading plan received in the South Coast District Office on November 8, 2007 showing roof drainage and patio area designed to slope into pervious areas and a bottomless trench drain across the driveway. Any

proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris**

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (c) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;
- (d) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.

5. **Future Development**

This permit is only for the development described in Coastal Development Permit No. 5-07-398. Pursuant to Title 14 California Code of Regulations Section 13250(b) (6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-07-398. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-07-398 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. **Landscaping - Drought Tolerant, Non Invasive Plants**

Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water

use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>).

7. Generic Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 3715 Seashore Drive within the City of Newport Beach, Orange County (Exhibits 1 & 2). The lot area is 1,947 square feet. The City of Newport Beach Land Use Plan (LUP) designates the site as RH-A High Density Residential; the proposed project is a single-family residence allowable under this designation. The project is located within an existing urban residential area, located between the mouth of the Santa Ana River and the Newport Pier.

The applicant is proposing to demolish an existing single family residence and two car garage located on the property and construct a new 2,266 square foot, 29 feet high (at maximum point), two story single family residence with an attached two car garage, landscaping and hardscape (Exhibit 3). The site is a beachfront lot located between the first public road and the sea. There is a wide sandy beach (approx. 250 feet wide) between the subject property and the Pacific Ocean. Due to its oceanfront location, the project site may be potentially exposed to the hazard of wave uprush during a severe storm event.

The proposed project will not have an adverse effect on public access. No seaward encroachments exist or are proposed as part of the project. Additionally, the proposed project is consistent with the City's 5-foot required setback from the seaward property line. Vertical public access to this beach is available at the end of 38th Street, adjacent to the site. Lateral public access is available along the wide sandy beach seaward of the subject site.

Portions of Oceanfront in the central part of the Balboa Peninsula near the City's two municipal piers are developed with a public walkway/bikeway. However, the project site is located north of this paved beachfront public lateral accessway (boardwalk). Although there is no paved walkway,

the City holds a public right-of-way for street/walkway/bikeway purposes. In the vicinity of the subject site, the City has never constructed any part of the Oceanfront street, but it has at times addressed the possibility of constructing a bike path and pedestrian walkway in the right-of-way in this area. Until the City pursues such public access improvements, the City, in conjunction with a program certified by the Commission through Land Use Plan policies, has allowed adjacent homeowners to construct limited patio encroachments of a specified width and depth, subject to payment of an annual in-lieu fee that is used by the City to make public access improvements. Authorization of these encroachments is revocable. The proposed project is located in an area where a 10-foot encroachment onto the City of Newport Beach Oceanfront public right-of-way on the seaward side of the home is allowed under the Commission certified Land Use Plan. In this case, there are no known existing encroachments and the applicant is not proposing any such encroachments at this time. Any such encroachments require a coastal development permit, which are typically subject to several special conditions. The applicant would need to obtain such a permit prior to installation of any development, including but not limited to landscaping or patios/garden walls, seaward of their property line.

The subject property abuts the street end at 38th Street, which provides public parking for public access to the beach. The City's Coastal Land Use Plan contains Policy 2.9.3-10 that discourages curb cuts that would impact public parking. The applicant is proposing driveway access to the property from Seashore Drive, and not from 38th Street. Thus, existing parking along 38th Street will not be impacted by the proposed project.

The proposed project includes hardscape and landscape improvements, including a new side yard walkway comprised of stepping stones on sand and concrete patio on the oceanfront side. The applicant proposes water quality improvements as part of the proposed project such as directing roof runoff to permeable areas and a bottomless trench drain across the driveway. Planter landscaping is proposed along most of the southern side yard. Proposed landscaping is comprised of native, drought tolerant, non-invasive plant species.

Any vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.

The placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications.

Furthermore, any plants in the landscaping plan should be drought tolerant to minimize the use of water. The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to comply with one or more of the following: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms to the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development, as conditioned, conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, use of one or more of the following: the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special

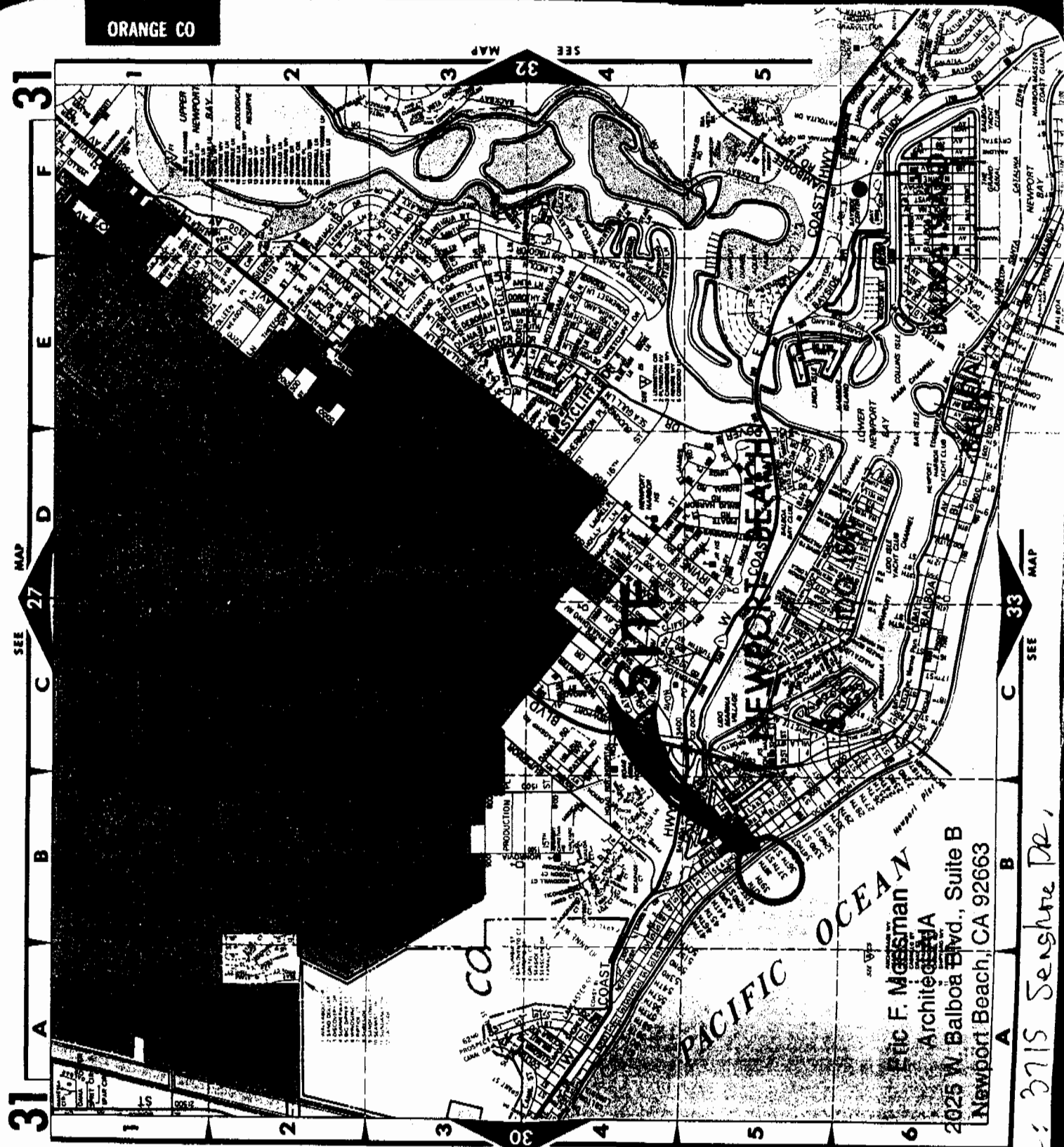
Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 13, 2005. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

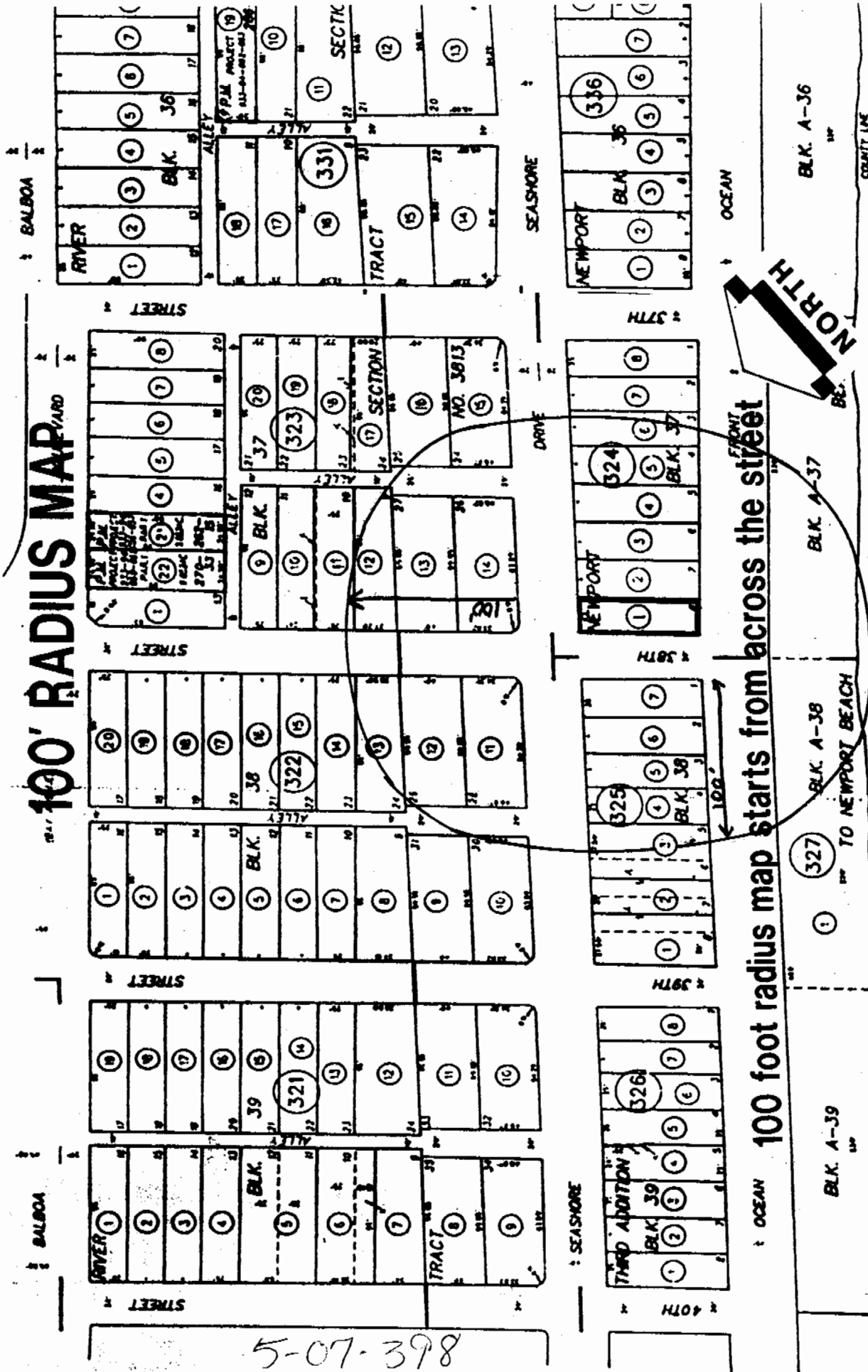


Eric F. Mossman
Architectural
2025 W. Balboa Blvd., Suite B
Newport Beach, CA 92663

for: 3715 Senghwa Dr.

5-07-398
Exhibit 1
Location, Map

100' RADIUS MAP



NEWPORT BEACH
3RD ADD. TO NEWPORT BEACH
JRD ADD. TO NEWPORT BEACH

ASSESSOR'S MAP
BOOK 423 PAGE 32
COUNTY OF ORANGE

NOTE - ASSESSOR'S BLOCK 6
PARCEL NUMBERS
SHOWN IN CIRCLES

NEWPORT BEACH
RIVER SECTION
TRACT NO. 3813
PARCEL MAP

BLK. A-36
BLK. A-37
BLK. A-38
BLK. A-39

SECTION 17
SECTION 18
SECTION 19

TRACT NO. 3813

THIRD ADDITION
BLK. 39

DRIVE

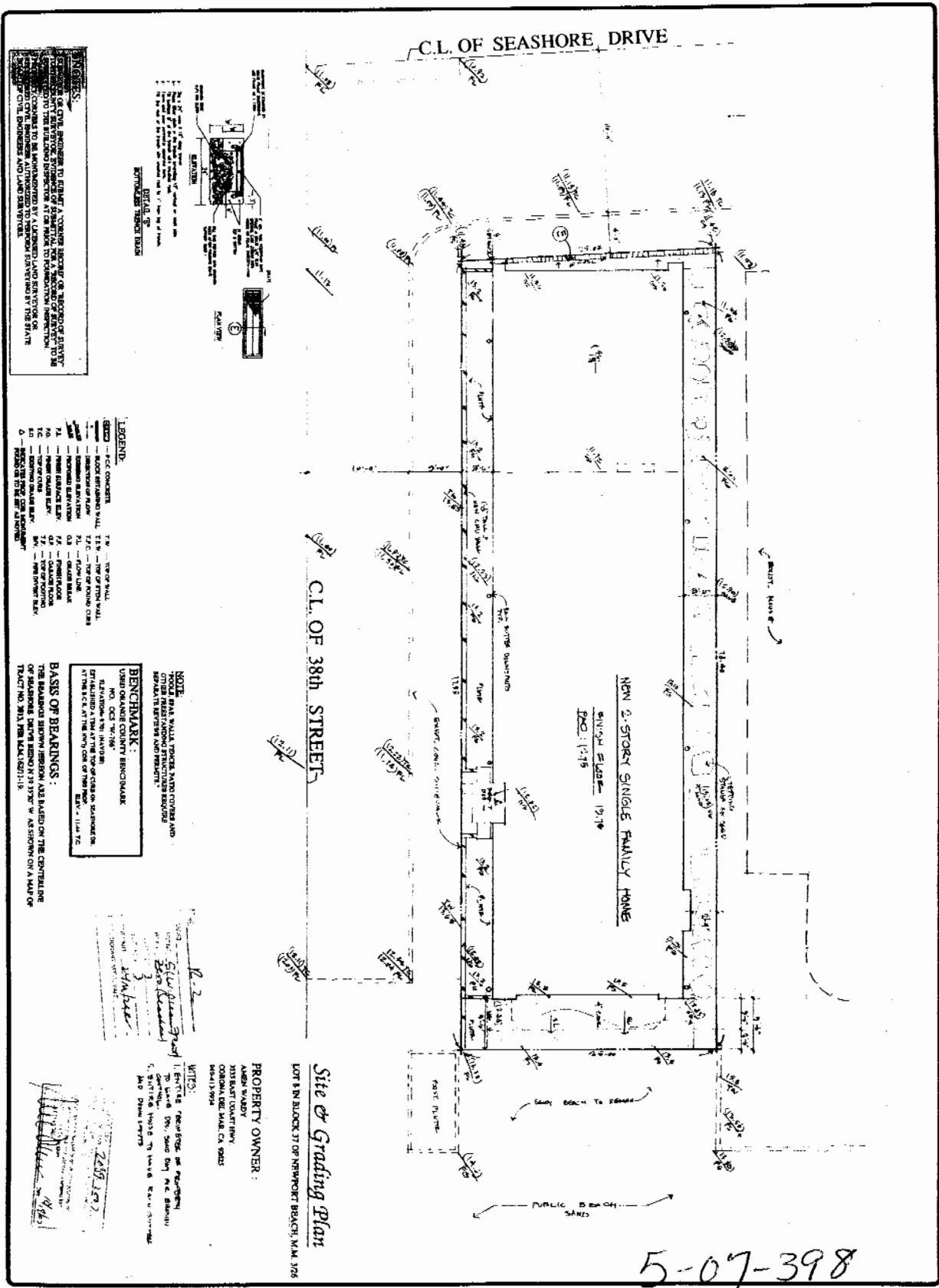
100'

OCEAN

SEASHORE

BALBOA RIVER

COUNTY LINE



NOTES:
 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE AND ALL APPLICABLE ORDINANCES.
 2. THE PROPOSED CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE AND ALL APPLICABLE ORDINANCES.
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- LEGEND:**
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 - 2. BLOCK REINFORCED WALL
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NOTE:
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PROPERTY OWNER:
 AMEN WARDY
 3535 BAYVIEW DRIVE
 OCEANA DEL MAR CA 92651
 949-439-1999

DATE:
 12/19/72

BY:
 ERIC F. MOSSMAN

SCALE:
 1" = 10'-0"

NO.	DATE	REVISION
1	12/19/72	1. PREPARED FOR THE ARCHITECT
2	12/19/72	2. CHECKED BY THE ARCHITECT
3	12/19/72	3. APPROVED BY THE ARCHITECT

Custom Residence for
Amen Wardy
 Located at
 3715 Seashore Drive - Newport Beach, CA

ERIC F. MOSSMAN
 ARCHITECT
 AIA, RAIC, NCARB
 (949) 675-1252
 2125 W. BALBUENA BLVD. SUITE B, NEWPORT BEACH, CA 92663

NO.	DATE	REVISION
1	12/19/72	1. PREPARED FOR THE ARCHITECT
2	12/19/72	2. CHECKED BY THE ARCHITECT
3	12/19/72	3. APPROVED BY THE ARCHITECT

Site Plan

Exhibit 3